No. 83-1729

In the Supreme Court of the United States

October Term, 1983

WILLARD BOSS and ROBERT RAWLINS on behalf of themselves and all others similarly situated,

Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS, AND HELPERS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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The decisions below are set forth at pages A 1-A 13 of the Petition for Writ of Certiorari (hereafter cited as "Pet.").

STATEMENT OF THE CASE

A. The Facts

Petitioners are building tradesmen who claim to be qualified as field construction boilermakers and who have sought and obtained boilermaker work through a job referral service, or hiring hall, operated by Boilermaker Local Lodge No. 197, Albany, New York. The hiring hall operated by Local Lodge No. 197 is established pursuant to the terms of a collective bargaining agreement known as

the Northeastern States Articles of Agreement and which is negotiated on an area wide basis in conjunction with sister locals in Oswego, New York, Hartford, Connecticut and Boston, Massachusetts. The Northeastern States Articles of Agreement incorporates certain minimum standards known as "the referral rules" which have, in turn, been adopted by the local joint referral committees of each of the four local lodges party to the agreement. The local joint referral committees are committees consisting jointly of representatives of the respective local lodges and signatory employers. These "referral rules" call for selection and assignment of qualified applicants for employment on a nondiscriminatory basis.

Alleging that they have, on occasion, been denied employment opportunities by Albany Local Lodge No. 197 for reasons which are "irrelevant, invidious or unfair to, or in derogation of, the employment status of such plaintiffs . . ." (Complaint, ¶ 29, Pet. A 20-21). Petitioners filed suit in the United States District Court for the Northern District of New York seeking certification of a nationwide class and demanding $50 million in damages from the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (the "International"). Although making no specific allegation of involvement by the International, its officers or employees, in any of the circumstances of which they complain, and without asserting any factual predicate for including within the sweep of the Complaint hiring halls other than that operated by Local Lodge No. 197 in Albany, New York, Petitioners baldly asserted that the International is to be held vicariously responsible for any maladministration of the hiring hall in Albany or elsewhere. In this regard, the Complaint alleges that the International stands "throughout the United States . . . [as the] . . . exclusive representative of employees for the purposes of collective bargain-

ing. . ." (Complaint ¶ 5, Pet. A 15). Thus, without pointing to any particular individual holding office or employment with the International who was in any way involved in the circumstances of which they vaguely complain, Petitioners alleged that vicarious liability was to be attributed to the International on the basis of an agency nexus between the International and its local affiliates.

> "Subordinate subdivisions of Defendant and officers and employees of such subdivisions serve as Defendant's agents in administering the exclusive referral procedures contained in the labor contracts described above." (Complaint ¶ 11, Pet. A 16).

B. The Proceedings Below

The International moved for summary judgment in the District Court challenging Plaintiffs' claim of vicarious liability. The District Court observed as follows:

> ". . . [T]o hold an International vicariously liable for the acts of the Locals *as agents,* it must either be shown that the International 'instigated, supported, ratified or encouraged' such acts, or that the Locals acted pursuant to 'their fundamental agreement of association.' . . ." 567 F. Supp. 845, 848.

Prior to applying fundamental concepts of agency to the case before him, Judge Miner found the following facts.

> "Although the International was the sole signatory to the Northeastern States Articles of Agreement (the instant collective bargaining agreement), the local unions here still retain plenary control over collective bargaining, *including* 'dispatching of job referral applicants,' International Constitution, article XXIV, section 10, and administration of the collective bargaining

agreement, Northeastern States Articles of Agreement, articles 5.3, 9, 11 and 26. There is absolutely no indication in the International Constitution, collective bargaining agreement or any of the proffered by-laws that the International was responsible for any of the complained of acts. Moreover, there is not a scintilla of evidence in the record that the International ratified or approved these acts." *Ibid* at 848.[1]

Finding further that the Joint Referral Rules of Local Lodge No. 197, promulgated jointly by officers of Local Lodge No. 197 and representatives of local employers, "expressly prohibit discriminatory treatment in the referral process . . .", the District Court found it clear, even ". . . taking Plaintiffs' allegations as true, that the locals complained of did not act in accordance with any 'fundamental agreement of association.'" *Ibid* at 848, fn. 4.

Finding from the unchallenged facts explicated for the Court's consideration that Plaintiffs had ". . . failed to provide evidentiary support for either prong of the labor agency test . . .," *Ibid* at 848, the District Court was led inexorably to conclude that Plaintiffs had failed to establish the necessary agency nexus which they had alleged. On appeal, the Second Circuit agreed and affirmed. (Pet. A 1-A 5).

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1. Although the District Court, taking plaintiffs' allegations as true, found agency lacking even if the International were the sole union signatory, each of the locals is also a party to the agreement. (See also, Resp. A 13-14).

ARGUMENT

I. The Decisions of the Courts Below Which Found the Necessary Agency Nexus Lacking Between the International and Local Unions Were Amply Supported by the Undisputed Facts.

The undisputed facts before the District Court demonstrated that Local Lodges 29 (Boston, Massachusetts), 175 (Oswego, New York), 197 (Albany, New York), and 237 (Hartford, Connecticut), which had prior to that time negotiated on a strictly local basis with area employers, joined together and negotiated the first Northeastern States Articles of Agreement in 1957. Such consolidated bargaining has continued since. While a Vice-President of the International participates in these area negotiations, the local unions retain plenary control over collective bargaining even as they must under the terms of the International Brotherhood's Constitution.

Having opted to bargain on a regional basis, the business managers of the four local lodges party to the Northeastern States Articles of Agreement serve as the negotiating committee. They alone vote to reject or accept employer proposals—the area Vice-President who chairs the union contingent votes only if necessary as a tie-breaker.

The area collective bargaining agreements are also administered by the local lodges. Theirs is the chartered jurisdiction under the Constitution, theirs is the responsibility to police the jobs and administer the contract, theirs is the discretion in handling grievances at the basic steps of the grievance procedure and theirs is the responsibility for manning the jobs through the dispatching of job referral applicants and control over the fiscal,

fraternal and business affairs of the local unions' day to day functions.

In negotiating the Northeastern States Articles of Agreement, the business managers of the Boston, Oswego, Albany, and Hartford locals, and the signatory employers, agreed to the operation of local hiring halls in accordance with Minimum Standards promulgated by the National Joint Rules and Standards Committee. The National Joint Rules and Standards Committee is a national advisory body consisting of labor and management delegates and which has drafted model referral procedures for suggested use by local referral committees. (Pet. A 24).[2] The employers and local lodge business managers negotiating the Northeastern States Articles of Agreement have elected to incorporate the National Joint Rules and Standards Committee's minimum standards into their collective bargaining agreement. (Resp. A 1-15).

The Northeastern States Articles of Agreement clearly specifies that it is the business manager of the particular local lodge who is to be the "registrar and dispatcher for the exclusive referral system. . ." (Resp. A 6). It is also the "local business manager who is *responsible* for the administration of the local joint referral procedures . . ." implemented pursuant to the terms of the Northeastern States Articles of Agreement. (Resp. A 5, Art. 4.1). (Emphasis added).

Upon negotiation of such contract terms whereby each local lodge specifically assumes responsibility for administration of the local referral procedure, the business managers of each local represented affix their signature, on behalf of their respective local, as a party signatory to the Northeastern States Articles of Agreement. (Resp. A 15).[3]

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2. References to Respondent's Appendix are as "Resp. A ....." Respondent's Appendix consists of pertinent provisions of the Notheastern States Articles of Agreement.

3. See Footnote No. 1, supra; and Resp. A 13-14.

On the basis of these facts, which were wholly unrebutted by the Plaintiffs, the District Court was bound to conclude, and the Appellate Court to affirm, that "Plaintiffs have failed to provide evidentiary support for either prong of the labor agency test." Thus, the International was entitled to summary judgment.

II. The Decisions Below Are Consistent With Carbon Fuel and Its Progeny.

There is nothing unique to Petitioners' cause. To the contrary, Petitioners filed suit against the International seeking to impose upon it vicarious liability for actions allegedly undertaken by a local lodge in derogation of contract terms and the duty of fair representation. But Petitioners failed to establish, as they had alleged, that such acts were undertaken by employees of the local lodge acting as agents of the International. Rather, they were unable to submit even a scintilla of evidence suggesting that the International had ever been made aware of their circumstances or that such had been authorized, ratified or condoned by it. Moreover, it was determined that the undisputed facts of record disclosed an autonomous local union retaining plenary control over collective bargaining and that the local union had, through the bargaining process, contractually assumed responsibility for operation of the local hiring hall of which Petitioners complain. Thus, it was simply concluded that Plaintiffs had failed to establish the required agency nexus by either prong of the agency tests articulated by this Court in *Coronado Coal Company v. United Mine Workers*, 268 U.S. 295 (1925), and *Carbon Fuel Company v. United Mine Workers of America*, 444 U.S. 212 (1979).

Petitioners assert that in none of the cases relied upon by the Courts below ". . . was the International union the sole and exclusive statutory collective bargaining repre-

sentative of employees." (Pet. A 5). While it would appear inaccurate to describe Respondent International as the sole bargaining representative in a situation where, as found by the Courts below, the local unions retain plenary responsibility for collective bargaining, it is clear that the United Mine Workers of America served as the exclusive bargaining agent in the facts of *Carbon Fuel,* supra. There the International itself retained control over the collective bargaining process, signed the agreement and assigned administrative functions to affiliated locals who were not signatory to the agreement. Nevertheless, it was determined that the International, the exclusive bargaining agent and sole signatory to the collective bargaining agreement, could not be held liable for dozens of blatant breaches of the contract terms undertaken at the hands of subordinate local bodies where the parent labor organization had not authorized, participated in or ratified such misconduct. *Ibid* at 213.

In light of this decision, the Southern District of Ohio, in facts more akin to those at bar, dismissed allegations of breach of the duty of fair representation brought against the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of North America and Canada, AFL-CIO. There plaintiff sought to hold the International liable for a local union's refusal to arbitrate a discharge grievance. The local union was operating under the terms of a national agreement negotiated by the International union but as to which the local was delegated responsibility for initial grievance handling. In granting the United Association's motion for summary judgment, the District Court offered the following observation.

> "Plaintiff contends that the fact that the United Association signed the [agreement] which provides for

grievance machinery, made Local 932 an agent. Acceptance of this premise ignores the *Carbon Fuel* decision. If a contract signature exposed an International union to vicarious liability for violations of that contract by their local affiliates, the results in *Carbon Fuel, Larraine, Buckeye Power,* and *Walters* would be reversed."[4] *Mauget v. Kaiser Engineering, Inc.,* 105 LRRM 3374, 3376 (S.D. Ohio 1980).

The National Labor Relations Board has approved a similar construction of *Carbon Fuel* as applied in the context of a local union administering a national agreement. *Musicians Local 47, American Federation of Musicians, AFL-CIO (American Broadcasting Company, a division of American Broadcasting Companies, et al.) and Camillo Fidelibus,* 255 NLRB 386 (1981).

"Respondent . . . argues that its international body is an indispensible party of this proceeding inasmuch as it 'not [Respondent] is signatory to the collective bargaining agreements. . .' However, there is no allegation that either the terms of those collective bargaining agreements or the procedure of transmitting checks to labor organizations for distribution to their members constitutes a violation of the Act. Rather, the allegation here is confined to the manner in which Respondent—and only Respondent—has chosen to implement that procedure. The evidence does not show that Respondent's International had been a participant in or had been aware of Respondent's manner of implementing that procedure. Congress has made it clear that International Unions are not to be held liable for the acts of their locals purely on the basis

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4. *United Steel Workers v. Larraine,* 616 F.2d 919 (6th Cir. 1980); *Buckeye Power Inc. v. Utility Workers Union,* 601 F.2d 759 (6th Cir. 1979); *Walters v. International Association of Plumbers and Steamfitters,* 323 F.2d 578 (6th Cir. 1963).

of the relationship between them. See, *Carbon Fuel v. United Mine Workers of America, et al.* [citation omitted] . . ." *Ibid* at 391.

It is apparent then, that the District Court and the Second Court of Appeals not only noted the vacuous evidentiary basis for Petitioners' allegations of agency but that they correctly construed the controlling decisions of this Court. The facts before the Courts below disclosed local unions with much greater autonomy than those described in *Carbon Fuel, Mauget,* the *Musicians* or even in *U.S. Steel Corporation v. United Mine Workers,* 598 F.2d 363 (1979). The District Court's decision described the local unions' authority over collective bargaining as plenary. The local unions assumed responsibility for operation of the hiring halls through that collective bargaining process and not as a consequence of assignment or delegation of authority from the International as Petitioners would have it. In such circumstances, the Courts below were clearly correct in concluding that agency status had not been established and that attribution of vicarious liability was otherwise unwarranted.

CONCLUSION

For the above stated reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

ARTICLES OF AGREEMENT

Between the

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS

and the

NORTHEASTERN STATES BOILERMAKERS EMPLOYERS

Represented by the Firms whose signatures are affixed hereto

[Union Logo]

October 1, 1957, Agreement As Amended
October 1, 1958, October 1, 1959,
October 1, 1961, October 1, 1964,
October 1, 1967, October 1, 1970,
October 1, 1973, October 1, 1975,
October 1, 1977, and October 1, 1978,
October 1, 1979, and October 1, 1981

In exercising or in not exercising the power and authorities herein granted, the committee shall act on and in accord with, but only on and in accord with, the vote of a majority of the then members of the committee. Having so acted, the committee may designate its then chairman, alone or together with one or more of its members, or one or more other members of the committee, to vote or to execute any document on behalf of the committee and/or Employer and/or all or some of the other Employers covered by this Agreement.

APPENDIX "D"

Joint Referral Rules and Standards

Article 1. Scope

In accordance with the non-discriminatory referral provisions established by the National Joint Rules and Standards Committee and the Northeastern States Agreement and Appendix "D" thereto, the below signed duly established Joint Referral Committee has adopted these rules and standards, supplementing the National Joint Referral Rules and Minimum Standards, which should govern the exclusive referral procedure in the geographical area of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and the following counties in New York State:

Albany
Broome
Cayuga
Chenango
Clinton
Columbia
Courtland
Delaware
Essex
Franklin
Fulton
Greene
Hamilton
Herkimer
Jefferson
Lewis
Madison
Montgomery
Oneida
Onondaga
Oswego
Otsego
Rennselaer
St. Lawrence
Saratoga
Schenectady
Schoharie
Seneca
Tioga
Tompkins
Warren
Washington

Article 2. Joint Referral Committee

The Joint Referral Committee shall consist of an Area Committee and a Local Committee of various geographical sections covered by the Northeast States Area Agreement.

2.1 The Area Committee shall be made up of Representatives or Alternates of Lodge #29, 175, 197 and 237 appointed by the International President, or his designees and an equal number of Employer Representatives or Alternates appointed by the Chairman of the Northeastern States Employer's Negotiating Committee. The Representatives or Alternates shall be designated in writing by the Employers Negotiating Committee or the Union Committee, whichever is appropriate.

2.2 The Union Local Committee and Alternates will be appointed by the International President or his designee to the various geographical sections covered by the Northeast Area Agreement as follows:

Local 29—Boston, Massachusetts

Local 29 Representative or Alternate or Designee W. Rees and Employer Representative David Hovey

Local 175—Oswego, New York
Local 175 Representative or Alternate or Designee Kenneth Oswald and Employer Representative Melvin Wiltsie

Local 197—Albany, New York
Local 197 Representative or Alternate or Designee A. Rossi and Employer Representative J. J. Doyle

Local 237 — Hartford, Connecticut
Local 237 Representative or Alternate
or Designee D. Dupuis
and Employer Representative
Keith Dean

2.3 The Area Joint Referral Rules Committee shall be empowered to establish or modify any and all rules and regulations consistent with the National Joint Rules and Standards from time to time, as deemed advisable for the operation of the job referral plan, including the establishment of appropriate out-of-work lists. Such rules or modifications shall be submitted to the National Joint Rules and Standards Committee for approval.

The Rules Committee shall require the posting of these referral procedures and rules at the appropriate registration facility and the actual places of hire at the employers' job sites.

Article 3. Local Joint Referral Disputes Committee

In accordance with the Labor Agreement and the National Joint Rules and Standards Governing Operation of Exclusive Referral Plans, the Local Joint Referral Disputes Committee shall be selected and empowered as follows:

3.1 *Selection.* The Local Joint Referral Disputes Committee shall be composed of equal numbers of Employer and Union Representatives and shall be appointed in a timely fashion, at the time of dispute, by the Chairman of the Employer's Negotiating Committee and the International President or his designee, respectively.

3.2.1 *Duties.* To hear and decide any and all disputes or grievances arising out of the operation of the job referral system, including but limited to, grievances arising out of work registration lists. All actions of the Local Joint Referral Disputes Committee shall be reported promptly, in writing, to the National Joint Rules and Standards Committee. If any question arises as to the qualifications and competence of an applicant, a joint referral

disputes committee shall make the determination. Such determination shall be fair and impartial without regard to applicant's membership or nonmembership in the union.

3.2.2 Decisions rendered by the Joint Referral Disputes Committee as to any and all disputes arising out of the operation of the job referral system shall be final and binding. In the event the Joint Disputes Committee fails to render a decision, they shall submit the question in dispute to an impartial umpire to be appointed by the National Joint Rules and Standards Committee. The National Joint Rules and Standards Committee shall determine the party or parties responsible for compensation of the impartial umpire. Decisions on the part of the impartial umpire shall be final and binding on all parties and shall be limited to determination of proper application of the rule or rules in question and shall not include imposition of monetary remedies unless requested to do so in the joint submission of the question by the Local Joint Referral Disputes Committee, with approval of the National Joint Rules and Standards Committee.

Article 4. Disputes Procedure

4.1. A grievant must first make an earnest effort to resolve his complaint or dispute with the local union Business Manager who is responsible for the administration of the Local Joint Referral Procedures. This must be done within seven (7) calendar days of the event or events giving rise to such complaint or dispute. If the matter is not satisfactorily resolved, the grievant may submit the matter for hearing by the Disputes Committee. This must be done by written notice to the Business Manager within seven (7) calendar days following failure to reach settlement of the dispute as outlined above. The Business Manager shall refer the written complaint to the chairman

of the Employer's Negotiating Committee and the International Vice President of the area. The grievant and the Business Manager may be required to submit, in writing (in advance of the hearing), any information needed to resolve the dispute intelligently, expeditiously and equitably.

4.2 *Dispute Bond — Forfeiture or Refund.* Grievants must deposit a good faith cash bond in the amount of one days gross wages which may be forfeited in the event the Disputes Committee finds against the grievant, in which event the cash bond will be used to defray in whole or in part the expenses incurred in processing the grievant's case. The bond will be returned to the grievant if the Disputes Committee finds in favor of the grievant.

Article 5. Registration

5.1. The local union shall establish and maintain an appropriate nondiscriminatory registration facility for qualified construction Boilermakers, Blacksmiths, and Apprentices who are available for employment.

5.2 *Place of Registration.* The registry for referral shall be the office of Boilermakers Lodge No. ..... at: .....

(Street)

.....

(City) (State) (Zip)

5.3 *Registrar-Dispatcher.* The registrar and dispatcher for the exclusive referral system Lodge No. ..... shall be the Business Manager of the Lodge or his designated representative.

5.4 *Order of Registration.* All qualified applicants shall be registered on an out-of-work list. It has been jointly determined that to qualify for registration on an

out-of-work list, a registrant must meet and satisfy the criteria established under the National Joint Rules and Standards as follows:

5.4.1 *Qualified Construction Boilermaker.* Boilermakers shall be qualified for registration on a boilermakers out-of-work list who can satisfactorily establish that they have had at least 8,000 hours actual, practical working experience in the boilermaking trade in the building and construction industry, or who have satisfactorily served an apprenticeship in the trade of field construction boilermaker under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

5.4.2 *Qualified Construction Boilermaker Apprentice.* Boilermaker apprentices shall be qualified for registration who can establish that they are indentured and serving an apprenticeship as field construction boilermaker under an apprenticeship program approved by the United States Bureau of Apprenticeship Training or State Division of Apprenticeship Standards.

An applicant shall not be considered as available for employment and eligible for registration if he is registered on any other registration list in any other geographical area. If it is found that a registered applicant is registered on the registration list of any other geographical area, his name shall be removed from the out-of-work list and the applicant shall be so advised by mail to his last known address.

A primary list of qualified applicants shall be established.

Applicants shall be registered on the appropriate out of work list in order of time and date of registration.

Applicants shall be required to furnish such data, records, names of employers, licenses and/or certificates as may be deemed necessary to establish qualification for registration. Any question as to qualification shall be resolved by the Local Joint Referral Disputes Committee.

In order to qualify for registration each applicant shall complete an application for registration form which shall establish his qualifications and list any special skills that he may possess, along with such other form or forms as shall be submitted to him for this purpose.

Article 6. Non-Discriminatory Referral

6.1. The Union and the Employer agree that referral of all classifications of construction boilermakers shall be on the following basis:

6.1.1. Selection of applicants for referral shall be on a non-discriminatory basis and shall not be based on, nor in any way affected by, union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of Union membership, policies, or requirement.

6.1.2. The employer retains the right to reject any job applicant referred by the Union. In the event the employer does reject a job applicant, his status will not be affected on the out of work list.

6.1.3. The union and the employer shall post, in places where notices to all employees and applicants for employment are customarily posted, all provisions relating to the functioning of these Rules and Standards.

6.2. Competent qualified registrants shall be referred from the out of work lists in a non-discriminatory, fair and equitable manner. This shall be done immediately and in accordance with the requirement of the employer's job.

6.3. Requests by contractors for key men to act as foremen shall be honored without regard to the requested man's place on the out of work list.

6.4. Due to the extensive knowledge required of the steward in the application of the bargaining agreement, jurisdiction, etc., the steward shall be appointed by the Union without regard to his position on the referral list.

6.5.

6.5.1 Registrants shall reconfirm their availability for job referral at least every two weeks in order to maintain their place on the Out of Work List. A registrant must be available for call within a reasonable time or the next senior registrant on the list shall be called. A registrant repeatedly unavailable when called and not answering calls on three separate days shall be notified by mail to his last known address of the times he has been called and unavailable and for that reason his name is being removed from the registration list for a period of fifteen (15) days, and will not be placed on the registration list again until such time as the applicant personally re-registers and gives assurance he will keep himself available for future calls.

6.5.2 A registrant will be allowed to refuse a job referral for a period of five (5) calendar days, for which he is qualified if he has compelling personal reasons which can be proven valid, such as serious sickness in the immediate family. If the registrant's problem has not been resolved after five (5) days, he will be removed and placed at the bottom of the list.

6.5.3 Registrants on the Out of Work List will be called or contacted at a phone number or address he designates within the local union geographical area. Registrants when called for referral will be informed of the nature

of the work he will be required to perform, provided such information is available.

6.5.4 Registrants who receive less than eighty (80) hours of work on the job to which he was referred shall, upon re-registering immediately after termination of the job, be placed on the registration list in the position he occupied prior to his referral; provided, however, that a combination of jobs to which the registrant has been referred shall provide a total of employment time of eighty (80) hours shall be considered one job; provided further that there shall be a lapse of no more than seven (7) days between the completion of one job assignment and the referral to the next.

6.5.5 No applicant for referral shall be permitted to register on the out of work list or be referred to any other job unless he has:

1. Entered name on out of work list within five (5) calendar days of separation from their previous employment. An applicant who fails to register within the specified five (5) calendar days will not be permitted to register on the out of work list for an additional fifteen (15) calendar days.
2. A registrant who requests his name off the out of work list will not be permitted to re-register on the out of work list for fifteen (15) calendar days from the day he requested his name off the out of work list.

Article 7. Suspension and/or Removal From Out-of-Work Lists

7.1 Registrants shall be suspended from the out-of-work list and therefore not referred for employment for:

A period of fifteen (15) calendar days for the first offense, or a period of thirty (3) calendar days for second

similar offenses and each offense thereafter within a consecutive 12 month period from the last offense for any of the following reasons:

1. Any registrant who accepts a referral and does not report to the job ready for work at the appointed time, unless he has a reasonable and acceptable excuse approved by the Business Manager.

2. Quitting or leaving an employer's job, unless approved by the employer and the Business Manager. Such approval will not be reasonably withheld by either party.

3. Two consecutive refusals of offered employment within the Local, unless reasonable excuse exists which is acceptable to the Business Manager. The excuse or excuses must be noted each time of occurrence on the registrant's referral record.

7.2. Any registrant who has been discharged for just and sufficient cause shall not be referred from the out-of-work list to do any job for a period of fifteen (15) calendar days following said discharge.

7.3. Registrants shall be suspended from the out-of-work lists and therefore not referred for employment for a period of ninety (90) calendar days for any of the following reasons:

1. Supplying Local registration agency with false data, records, or information used to establish qualifications for registration.

2. Two consecutive discharges for just and sufficient cause or two discharges within six (6) months for just and sufficient cause.

3. Assaulting anyone on any job site to which he has been referred.

4. Involvement in any unauthorized strike, work stoppage, slowdown, or any other activity having the effect of curtailing the work or otherwise disrupting the job.

5. Failure to return to work, when involved in a violation of the Agreement, as instructed by either a Local Lodge or International officer of the Union.

6. Insistence on recognizing illegal or unauthorized picket lines.

7. Interference with proper administration or referral procedures.

NOTE: All penalties imposed under this article shall be reported immediately on the appropriate form to the National Joint Rules and Standards Committee. Penalties for violations under paragraphs 4, 5, 6 and 7 of Section 7.3 will be applied nationwide by the National Joint Rules and Standards Committee.

Section 7.4 Violations disruptive of the industry, such as acts of violence, acts of sabotage or serious chronic violations of referral rules will be referred to the National Joint Rules and Standards Committee for action. Such violations shall be cause for serious disciplinary action up to and including permanent removal from all out-of-work lists governed by the National Joint Rules and Standards.

Section 7.5 Employers shall cooperate with the Union by giving to the appropriate union official adequate oral and written report of all terminations, stating time, date, and reason.

Article 8. Change or Modification

The Rules, Regulations and Standards may be changed or modified from time to time by the Joint Referral Rules

Committee, subject to the provisions of Article 2, Section 2.3.

Article 9. General Savings Clause

It is not the intent of the Joint Referral Rules Committee in operating under the Rules, Regulations and Standards set forth herein to violate any laws or any rulings of any governmental authority or State agency having jurisdiction of the subject matter contained herein, and it is understood and agreed between the members of the Joint Referral Rules Committee that, in the event any provision or provisions of the Rules, Regulations and Standards shall be held to be contrary to law, it shall not affect any other provisions hereof.

EFFECTIVE as amended this 26 day of September, 1978.

AREA JOINT REFERRAL
COMMITTEE

For the Employers:

David Hovey
Melvin Wiltsie
J. J. Doyle
Keith Dean

For the Union:

Local 29—Boston, Mass.
Walter Rees
Local 175—Oswego, N. Y.
Kenneth Oswald
Local 197—Albany, N. Y.
A. Rossi
Local 237—Hartford, Conn.
D. Dupuis

Approved February 16, 1978
National Joint Rules and Standards
Committee

For the Union:

/s/ Charles W. Jones
/s/ David L. Lewis
/s/ Joseph C. Meredith

For the Employers:

/s/ R. N. McGlothlin
/s/ J. F. Erickson
/s/ R. B. Sierra

Representing the Employers:

/s/ J. L. Darus, Chairman
/s/ G. Roth, Sec.-Treas.
/s/ D. C. Hovey
/s/ J. J. Doyle
/s/ D. Freeman
/s/ W. Osborne
/s/ P. Wiltsie

Representing the Union:

/s/ H. Nacey, Chairman
/s/ David Dupuis, Secy.
/s/ A. L. Rossi
/s/ Fredrick Hayes
/s/ Kenneth Oswald

This Agreement, as negotiated by the foregoing committees at Boston, Massachusetts, is hereby accepted by the parties signatory hereto this ..... day of ....., 19....., with the full understanding that this Agreement is between the Union and the individual signatory Employers.

Representing the Union:

/s/ H. Nacey, Chairman
/s/ David Dupuis, Secy.
/s/ A. L. Rossi
/s/ Fredrick Hayes
/s/ Kenneth Oswald

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